

# EXHIBIT A



Brian L. Gardner  
Member  
Admitted in NY

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May 9, 2024

**Via E-mail and FedEx**

Tricia S. Lindsay, Esq.  
Law Offices of Tricia S. Lindsay  
5312 E. Lincoln Avenue  
Suite 5B  
Mount Vernon, NY 10552

**Re: Thomas Fogarty/Highbury Concrete, Inc.  
Demand to CEASE and DESIST**

Dear Ms. Lindsay:

This firm is counsel to Highbury Concrete, Inc. (“Highbury”). We are advised that the Confidentiality Agreement entered in the action *Fogarty v. Jimenez-Fogarty*, Index No. 35547/2021, which requires Highbury’s business information to be kept confidential, has been breached by your client and law firm, which have published Highbury’s confidential information to the public. By this letter, we are hereby directing your client, law firm, and all those acting on behalf of your client or law firm, to immediately CEASE and DESIST from any further disclosure of Confidential information relating to Highbury, failing which our client will seek immediate legal recourse against all persons involved in such conduct.

The Confidentiality Agreement – signed by you and your client (“Confi Agreement”) – provides, in relevant part, that “documents or information concerning the business, finances, proprietary technical information, or clients of . . . Highbury concrete” produced in discovery constitute “Confidential Information.” Confi Agreement, ¶A. Confidential Information “shall not be used or disclosed for any purpose whatsoever other than for the purpose of negotiating a settlement between the parties hereto or prosecuting or defendant any litigation between the parties” and may only be shown to a narrowly prescribed categories of persons, including the attorneys for the parties, experts, and the Court. *Id.*, ¶B.

In breach of the Agreement, we are advised that Confidential Information belonging to Highbury, including a Business Credit Application dated April 9, 2021, produced in discovery to your client by Mr. Fogarty, was provided to the news media by you and/or your client, and were shown in a newscast on NBC-4, a newscast in which both you and your client participated and



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were interviewed. The newscast specifically showed, among other things, the “Gross Profit (Monthly Income)” amount stated for Highbury on the form.<sup>1</sup>

Disclosure of Highbury’s Confidential Information to the public is a blatant breach of the Agreement. Highbury’s business information produced in discovery – including the document in issue – unquestionably constitute Confidential Information; information that you, as counsel for Ms. Jimenez-Fogarty, specifically agreed to keep confidential and “take reasonable precautions” to keep confidential. Confi Agreement ¶E.

There cannot be any serious doubt of your involvement in disclosing the Confidential Information, as you were interviewed and participated in the newscast which published Highbury’s Confidential Information. In addition to breaching the Confi Agreement, any wrongful disclosure of Highbury’s Confidential Information by your firm is a breach of your firm’s ethical duties and a violation of the Rules of Professional Conduct.

Your client, law firm and all those acting on behalf of or in concert with your client and law firm are hereby directed to immediately CEASE and DESIST from any further violation of the Confi Agreement. In the event any further breach of the Confi Agreement occurs, Highbury will take appropriate legal action against all individuals assisting or otherwise involved in any such breach, including for immediate injunctive relief, and any and all damages caused by such conduct, including consequential damages, legal fees and penalties as may be applicable. We also reserve the right to bring any such conduct to the Attorney Grievance Committee. Please be guided accordingly. If you and your client are denying having made the disclosure in issue, please advise us immediately.

The foregoing is without waiver of any of Highbury’s rights or remedies, under the Confi Agreement, at law or in equity, all of which are expressly reserved.

Very truly yours,

COLE SCHOTZ P.C.

*/s/ Brian L. Gardner*

Brian L. Gardner

BLG:dtm

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<sup>1</sup> The document bears bates stamp TF00042.